IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9769 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

MADHUKAR T BAPAT

Versus

STATE OF GUJARAT

Appearance:

MS ROOPAL R PATEL for Petitioner No. 1

Mr.K.M.Parikh, learned AGP for the respondents Nos.1 to 3

No one has appeared on behalf of respondents Nos.4 and 5

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 27/08/2001

ORAL JUDGEMENT

1. The petitioner herein has come with the case that he was initially appointed as a Junior Research Investigator on 21.9.61 with Agro Economic Research Centre under Sardar Patel University. It is submitted

that this Agro Economic Research Centre is a part and parcel of the Sardar Patel University. At the time of petitioner's retirement on 1.7.91 he was working as a Senior Research Assistant. At that time, the last pay drawn by the petitioner was Rs.3825/-- per month. It is submitted that the pay scales of the employees of the University and the Centre, where the petitioner was working, was revised in the year 1986 with effect from 1.1.86 and they were offered revision accordingly.

2. It has been further submitted that after the revision of the pay scale with effect from 1.1.86, the upper limit of the gratuity in case of pension holders was revised to Rs.1,00,000/-- with effect from 1.1.86 by a Government Resolution dated 31.7.87. However, no decision was taken with regard to such increase with regard to the upper limit of the gratuity in case of those, who are members of Contributory Provident Fund and the question remained under consideration of the Government. So far as employees of the Agro Economic Research Centre are concerned, no option with regard to the pension was available to them as other employes of the University and the only option available to the workers working in Agro Economic Research Centre was Contributory Provident Fund. The petitioner was a member of the Contributory Provident Fund till the time of his retirement and was paid retiral benefits accordingly, including gratuity at the last pay drawn by him i.e. Rs.3825/-- per month. It has been further submitted that the Government decided to raise the upper limit of gratuity in case of the members of the Contributory Provident Fund Scheme by Government Resolution dated 17.9.91 raising it from Rs.36000/-- to Rs.75000/-- and this upper limit was further revised by yet another Government Resolution dated 19.1.93 from Rs.75,000/-- to Rs.1,00,000/-. Thus the upper limit of the gratuity was raised to Rs.1,00,000/-- by the Government Resolution dated 19.1.93 in case of the members of the Contributory Provident Fund Scheme whereas the upper limit for gratuity in case of the pension holders was raised to Rs.1,00,000/-- from 1.1.86. The petitioner, therefore, filed the present Special Civil application claiming that in case of the members of the Contributory Provident Fund holders also the gratuity should be paid at the upper limit as was made applicable to the pension holders and that the treatment, as has been meted out to the members of the Contributory Provident Fund, is discriminatory and violative of Articles 14 and 16 of the Constitution of India. Merely because the decision to raise the upper limit of the gratuity was taken in September 1991 and again in January 1993 i.e. the date after the retirement

of the petitioner i.e. 1.7.91, he has been wrongly deprived of the higher amount of gratuity. This Special Civil Application was filed on 23.9.93, notice was issued on 24.9.93 returnable on 19.10.93. Rule was issued after notice to the other side on 16.8.94. By this time, this petition has remained pending for a period little short of 8 years,but none of the respondents have filed any reply. However, Mr.K.M.Parikh, learned AGP, has submitted that these were the Government Resolutions meant for only Government servants and, therefore, the petitioner, being an employee of Research Centre controlled by the University,could not claim benefit, which was extended to Government servants. He has further submitted that even if these Resolutions are found to be applicable to the employes of the University and Research Centre, no benefit could be given to the petitioner because he had already retired on 1.7.91, prior to the date of the issue of the Government Resolutions dated 17.9.91 and 19.1.93. A reading of the Government Resolution dated 17.9.91, makes it clear that the question under consideration was with regard to the enhancement of the maximum limit of death cum retirement gratuity to the employees of the University and Colleges, who had opted to remain under Contributory Provident Fund Scheme. Similar is the position with regard to the contents of the Government Resolution dated 19.1.93. It is, therefore, clear that these two Resolutions were with regard to the employees of the Universities and Colleges. Therefore, such Resolutions were applicable to the employees of the Universities and the Colleges and consequently to the employees of the Research Institute Respondent No.5 herein. Therefore, the first submission made by Mr. K.M.Parikh has no substance and the same is rejected.

3. His next submission is that the benefit under these Resolutions could not be claimed with retrospective effect by the petitioner because he has retired on 1.7.91 i.e. prior to the date on which these Government Resolutions were passed. This argument has no substance for the following reasons:-

(i) The pension and provident fund are two equal alternatives in case of the employees, so far as the post retirement benefits are concerned. Therefore, those who opt for pension or the other equal alternative of provident fund, cannot be treated in a different manner.

(ii) In the instant case there is no dispute that the employees, who were working in the Research

Institution - Respondent No.5 had no choice except to be the members of the Contributory Provident Fund as there was no pension scheme.

(iii) So far as the death cum retirement gratuity is concerned, the employees, whether they have opted for pension or for Contributory Provident Fund, can not be treated differently.

(iv) Merely because the decision with regard to the pension holders was taken at an earlier point of time i.e. on 31.7.87 and made effect from 1.1.86 and the decision with regard to the members of Contributory Provident Fund was taken on 17.9.91 and on 19.1.93, it cannot have any decisive adverse impact. The Government may have decided it at a latter point of time, but while taking a decision with regard to the members of the Contributory Provident Fund even in the year 1991 and again in the year 1993, to bring the upper limit of death come retirement gratuity to Rs.1,00,000/--, the same ought to have been made applicable with effect from 1.1.86 as was done in the case of the pension holders.

(v) For the purpose of payment of death cum retirement gratuity, the retired employees form one class by itself. Whether they are pension holders or members of the Contributory Provident Fund and by no intelligible differentia any distinction can be made for the purpose of death cum retirement gratuity on the ground that one set of employees are pension holders and the other set of employees are members of the Contributory Provident Fund. Therefore, when the decision was taken to raise the upper limit of the death cum retirement gratuity in September 1991 to raise it from Rs.36,000/-- to Rs.75,000/-- and again in January 1993 to raise it from Rs.75,000/-- to Rs.1,00,000/--, care ought to have been taken that the maximum limit of Rs.1,00,000/-- should have been made applicable from 1.1.86 as was done in the case of the pension holders vide Government Resolution dated 31.7.87.

(vi) Further it has to be noted that on 31.7.87 when the upper limit of the gratuity of Rs.1,00,000/-was retrospectively applied from 1.1.86, the petitioner was very much in service and he had retired subsequently i.e. on 1.7.91

and, therefore, the benefit of the upper limit of the gratuity should have been extended to the petitioner on the same terms as was done in the case of the pension holders and the petitioner could not be deprived of this benefit of the revision of the upper limit of the gratuity from 1.1.86. If such a different treatment is given for the purpose of death cum retirement gratuity to the employees belonging to the same class, merely on the ground that one set of employees are pension holders and the other set of persons are members of the Contributory Provident Fund, it is bound to result in creating a class within a class and it is transparently clear that the members of the Contributory Provident Fund stand discriminated in violation of Articles 14 and 16 of the Constitution of India vis a vis the pension holders. In the opinion of this court, whether an employee is a pension holder or a member of Contributory Provident Fund, he stands on the same footing and is similarly situated so far as the benefit of the death cum retirement gratuity is concerned and they cannot be treated differentially. Accordingly this Court finds that the petitioner is entitled to the benefit of the upper limit of gratuity of Rs.1,00,000/-from 1.1.86 and to that extent the Government Resolutions dated 17.9.91 and 19.1.93 are found to be discriminatory in the context of the earlier Government Resolution dated 31.7.87, which was taken with regard to the pension holders making the upper limit of gratuity of Rs.1,00,000/-- applicable to the pension holders with effect from 1.1.86.

4. The respondents are, therefore, directed to pay the due amount of gratuity to the petitioner, who retired on 1.7.91 as was made available to the pension holders and any amount due shall be paid accordingly, preferably within a period of three months from the date the certified copy of this order is produced before the concerned authority and for this purpose the respondents shall issue appropriate orders. This Special Civil Application is allowed and the rule is made absolute. In the facts and circumstances of this case, no order as to costs.

(M.R.Calla,J)